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Vignettes of the Criminal Court

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VIGNETTES OF THE CRIMINAL COURT[1]

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Perjury in a Divorce Case

Here was one of the few perjury charges reaching the Criminal Court trial stage. The indictment charged the defendant with having made false statements under oath in a divorce suit. The presiding judge in the divorce case was endeavoring to make an example of the defendant, considering his testimony a flagrant violation of the statute. The defense attorney would ask a prospective juror, "You believe that every man is entitled to a fair and impartial trial? You wouldn't convict the defendant unless he were proved guilty beyond a reasonable doubt?" The juror naturally agreed with him.

The examination would continue along this line: "False swearing is not perjury in Illinois. To be guilty of perjury, a man must have violated the perjury statute with all the elements of that offense." The defense attorney was well-acquainted with the distinction between "false swearing" and "perjury."

In the course of his questioning, he said, "They try and determine about a hundred divorce cases a day in the courts of this county."

On another occasion he said, "Is this the first time that you have been called upon to be a judge? Well, we will let you act as judge in this case.

"Would your answers be the same except as to the questions that applied personally to the other jurors?

"Do you have any objection to the principle of divorce, or a prejudice against people who have been divorced?

"Do you have any preconceived notion of what the decision in this case ought to be?

"When you take your seat as a juror, you do not lose your common sense. The law expects you to use it in deciding the issues."

Although the judge in the divorce case appeared as a prosecuting witness, the court was forced to take the case from the jury upon a failure of proof of the elements of the charge.

[1] The last two installments in this series have been published in numbers 3 and 4 of this volume.

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Good Reputation in Robbery Trial

An erstwhile actor, caught by a grocer while running from his store after a robbery, was now facing a jury. The accused was intoxicated at the time. His youthful wife, stylishly dressed, appeared at the defense side of the table. The defendant's associate in the robbery shouldered the entire blame. The defense contended that the accused did not know what was going on and his previous good reputation showed he could not have been in his right mind to commit such a cheap holdup. It was also pointed out that the defendant's twenty-five years in the show business entitled him to receive aid from the Equity Association of which he was a member.

Counsel did not ask for an acquittal in the course of his final argument, but did say, "What is the use of spending millions of dollars for this new courthouse if it is not spent in the name of justice?"

The jury promptly convicted the co-defendant but disagreed as to the actor. Thereupon the judge reduced the bond from ten to two thousand dollars. A few weeks later the State *nolle prossed* the charge.

Back-Seat Driver Blamed for Death

Defense counsel accepted the first twelve jurors who stepped into the box. A woman had been struck and killed by an automobile driven by the defendant, nineteen years old. His employer was in the car at the time. The latter was indicted with the boy but obtained a separate trial upon a motion for a severance. The accident occurred on the left side of the street, in fact, along the left curb. Another feature of the case indicating criminal recklessness was the fact that the defendant drove on until forced against the curb by a pursuing driver. No trace of whiskey or other intoxicating beverage was observed about the boy, although the employer's breath indicated that he had been drinking. The latter was present during the trial but did not take the stand. The boy testified that the accident occurred in the wee hours of the morning, that his boss had been drinking throughout the evening; and that both were tired and anxious to reach home. His boss had directed him "to step on it." Urged again and again to go faster, it was while driving in this fashion, that the accident occurred. Defense counsel argued that the boss should be on trial. He was the real cause of the accident. There were no eye-witnesses. The jury accepted the boy's version of an unavoidable accident and acquitted. The

trial, including the selection of the jury, hearing of the evidence, arguments, and instructions was completed during the day.

Shooting Troublesome Boys

The defendant, a woman forty-five years of age and neatly attired, was replying briskly to questions propounded by her attorney. The latter was seeking to bring out points not permissible under the rules of criminal evidence. From the testimony, it appeared that she and her husband were the owners of a sixteen-apartment building in which they lived, located in the neighborhood of a group of young boys known as "Gang No. 33." The accused testified that on numerous occasions she had trouble with them. Several times they entered the basement of her building to commit mischief. They had often entered the vestibule and written upon the walls of the hallway. Her son had been kidnapped by them. The judge made it clear that unless the jury found that the deceased boy was identified with these acts they should have no bearing on the issue. If he were identified as one of the gang, however, who had created trouble before, the judge instructed the witness that she might tell the jury about these acts because they tended to explain the subsequent homicide.

The locale of the tragedy was the basement of her home. She had heard the boys talking. Picking up a loaded gun behind a clock on the dresser in her room. she surprised them. They fled out the rear door. She was highly excited and fired the first shot into the ceiling to scare them. With no intention to kill the deceased, she was horrified upon finding that one of the bullets had entered his body. He lay mortally wounded at the entrance into the basement. On previous occasions, members of the gang, including the deceased boy, had threatened her life. On the day in question. as she came down the stairs. they called her insulting names. She felt at that moment that they might make an attack upon her. On the theory, then, of self-defense. coupled with a denial of any intention to kill, she submitted her fate to the jury. While self-defense was difficult to establish, her claim that she had not intended to kill the boy and had shot solely for the purpose of frightening him away was at least a plausible explanation. The fact that she had borne an excellent reputation would cause the jury to attach considerable weight to her story.

Several of the boys in the neighborhood denied the testimony of the defendant that the deceased had caused annoyance on previous occasions. They denied. also, that the deceased or they were

members of "Gang No. 33" or any other gang. The defendant had conveyed the idea that other property owners in the neighborhood, who had been victims of the gang, would not testify because of their fear of consequences.

The State's attorney laid stress upon the argument that it was not necessary for her to use a gun to chase away playful boys. The defendant had no right to use a gun for this purpose and its employment invested the act with malice, making the user legally responsible for its consequences in spite of her contention of a lack of intent to kill. A jury will consider very solicitiously, however, the case of an accused who it is reasonably certain, will not be a menace in the future. Here, the defendant was not a criminal. Jurors weigh the question of responsibility with a view of protecting society, but will not go out of their way to doom the accused. If the scales are evenly balanced, the jury will frequently consider the question whether society will be safe with the defendant in its midst. As they decide this question, they will render judgment. In this case they acquitted.

A Nephew Charged with Slaying His Uncle

A negro about eighteen years old was charged with killing his uncle. In the State's attorney's cross-examination of the prisoner, he asked, "How tall was the deceased?" Answer: "Six feet, one inch."

"How heavy a man was he?" Answer: "195 pounds."

Since the accused was maintaining that the shooting was in self-defense as the uncle approached the boy with a butcher knife, the height and weight of the alleged assailant materially assisted the defense. The accused was about five feet in height, weighing only 110 pounds.

"What were you doing before five o'clock on that day?" Defense counsel objected, saying, "That is not proper cross-examination." The objection was sustained.

The State's attorney's next question was, "Where did your uncle get the knife?" The defending attorney again objected, claiming that the prosecutor had to confine himself to matters brought out in direct-examination. The objection was again sustained.

A well-dressed grey-haired negress then took the stand for the defense to testify that the accused had borrowed fifty cents from her on the day of the slaying, thus corroborating a phase of the defendant's story. She also testified as to his reputation for peacefulness and quietude.

The defendant had surrendered to the police upon his attorney's advice, the latter going to the station with him and doing the talking for him. After the accused was placed in the hands of a sheriff, the attorney was satisfied he would not be questioned further. Since there is always a definite cause underlying a slaying, a full account of the tragedy is immediately requested by the police. Unless this story is repeated at the trial, officers will be called to contradict the accused.

The defendant testified that his uncle had hurled the vilest epithet in the language at him and shouted, "I'm going to kill you." This threat provoked the fatal attack.

At one time during his direct-examination of the accused, the defense attorney said, "I promise to connect that matter by other testimony."

On another occasion he asked, "Will your honor please rule upon that point so that I may preserve an exception?"

The defendant didn't remember how many shots were fired. This foreclosed much cross-examination as to details surrounding the homicide.

Strangely, the wife of the uncle sided with the accused. Counsel asked her, "Did your husband drink?" An objection to the question was sustained, but the inference was plain.

He then asked, "Did your husband ever talk to you about this boy?" An objection was also made to this question. The defending attorney was about to explain why the inquiry was admissible. When the judge indicated he would order the jury withdrawn, the attorney said, "Oh, I don't want to lose the court's time. I'll preserve my exception and go ahead." The impression given was that the attorney was so confident of the ultimate result that he was willing to waive a legal right to conserve the time of the court and jury.

Testifying that she had been working for the same employer for fifteen years, the impression was given that she had supported her husband during this period. Along with the plain inference that he was a heavy drinker, the jury was led to believe there was not much loss in the slaying. The defense attorney wisely reserved this testimony till the end of his examination in chief. The widow may have reasoned nothing was to be gained by sending a boy to the penitentiary on account of an attack upon her worthless husband which incidentally proved fatal. There was a quick verdict of not guilty.

Alleged Confessions Met by Alibis

The scene of this homicide was a south side saloon. The State charged the three defendants with killing the victim during a hold-up and further claimed that the defendants had confessed. The accused were also identified by three witnesses. The defense proceeded upon the theory that the confessions were forced and that the three identifying witnesses were mistaken. Each defendant presented several alibi witnesses.

Two of the defendants were arrested shortly after the offense. Implicating their confederate, he was arrested soon afterwards. When a policeman testified about a confession, one of the defending attorneys who had been in the prosecutor's office for a number of years and had become well versed in third degree technique, was assigned the role of cross-examiner.

He developed a picture wherein there were several policemen in a small room with the defendants. The inference was raised, "Why was it necessary to have police officers interviewing these boys? What were the assistant State's attorneys being paid for?"

A prosecutor who had recently left the office assured defense counsel that if he were called as a witness by the assistant State's attorney handling this trial to substantiate the confessions, he would reveal the physical condition of the boys at that time. He wasn't called.

The verdict hinged upon the confessions. They had to be explained away for the defense to prevail. With the definite knowledge of brutality imparted to him by the former prosecutor, the cross-examiner felt confident of his ability to break down the testimony of these police officers.

During the presentation of the defense, one of the boys testified that he went to church on the Sunday morning of the homicide. The prosecutor asked, "What church?" When the defendant answered, "Saint Mary's," the five Irish jurors smiled.

One of the defendant's hands had been badly injured in early childhood. None of the identifying witnesses, however, had noticed it during the robbery. Once again, a disfigurement was being relied upon to help an accused gain his freedom.

In final argument the first speaker for the defense started out in this vein, "You have the distinction of sitting as jurors in a courtroom presided over by a judge who recently was sitting in a review-

ing court. Certainly he would not permit me to misquote the law, even if I dared do it.

"Our constitution is the supreme law of the land. The 8th Article of the Bill of Rights declares, 'No citizen shall be forced to give evidence against himself.' Now this section was being violated so many times by the Chicago police that the legislators, in their wisdom, saw fit to pass a special act making it a criminal offense to extract a confession by third-degree methods."

The jury elected to discredit the police officers, giving the three defendants their liberty.

An Attack Upon a Police Officer While on the Stand

A colored man, forty years of age, was charged with the slaying of a policeman while in plain clothes. With nerves on edge during the testimony of one of the officers, his eyes glared in anger. Suddenly he arose and dashed toward the witness. This outbreak, though perhaps justified by the twists being given his alleged confession, augured ill for him. Twelve white men were about to pass judgment upon him. The jury might believe that he had murder in his heart when it came to policemen and could not resist shooting them if the opportunity presented itself.

The State's case was based upon a theory that the defendant and his companion were holding up a victim when a squad car happened to pass by. Two of the officers ran toward them to make the arrest. In the scuffle, shots were fired. One of the policemen fell mortally wounded. His companion pursued the defendant and finally arrested him. The opposing version was that the defendant's companion drew a gun on an acquaintance they had met and he (the accused) foolishly ran away. The fact that he had lately been discharged from the Joliet penitentiary militated against this theory.

In the course of a discussion prompted by the effort to introduce this confession, the judge said, "I will permit a separate hearing on the admissibility of a confession only when a defendant either claims he was brutally compelled to confess, or where he was led to believe that it would help him by making it. In either of these events, it must be claimed that the prosecuting authorities acted unlawfully.

The judge seemed inclined to place considerable credence upon the defendant's three claims, that he was unconscious at the time the confession was prepared; that he never signed it; and that the confession had never been read to him. Yet the court did not believe these contentions necessitated a separate hearing. While he

felt that they were proper inquiries for cross-examination upon the question of the credibility of the alleged confession, the State could introduce it without a separate hearing. The court permitted the defense to cross-examine the policemen at length, to show the defendant's unconsciousness shortly after his arrest, the paralytic condition of his left side, the fact that the accused was committed to a hospital, the nature of his wounds, and his denials that the statement had been read to him or signed.

Defense counsel asked the arresting officer how he happened to remember the warning given the accused that his statements might be used against him. He also asked whether he had made a memorandum of the investigation; whether the alleged statement was a narrative upon the part of the accused or the result of detailed questioning; and whether the officer wrote up the examination immediately thereafter.

Feeling there would be a death verdict and sentence, followed by a writ of error in the Supreme Court, the judge stated for the benefit of the court reporters, "In a case of this character, the defendant should have considerable latitude in cross-examining police officers."

The accused was found guilty and sentenced to death.

Facing the Electric Chair

Three young men were charged with the murder of a storekeeper during the commission of a holdup. Two of the defendants under the indictment elected to plead guilty with an assurance that they would receive a sentence of life imprisonment. Zander, however, couldn't see it that way. A soldier with an excellent overseas record, he was determined to plead not guilty. The impression was given during the selection of the jury, that his case was hopeless. The prosecutor piled up his evidence and followed this with an impressive closing argument. The jury returned a verdict of death within twenty minutes. An effort was then made to have the court permit the accused to accept the same punishment which was to be meted out to his associates. The American Legion delegated two attorneys to sponsor his cause. In arguing their motion for a new trial, one of them spoke of the effect of shell fire upon the mind. Claiming that the accused was psychopathic, an invert personality, the attorney maintained, "While he had the courage to go to the jury on a plea of not guilty, he used poor judgment, to be expected from such a type." Finally, the judge interposed, "Zander, what have you to say for yourself?" The prisoner answered in a low, almost whis-

pering tone, "I would rather have life than the chair." The judge asked, "When did you change your mind?" After a few pleasantries, the judge granted the motion.

The defendant had taken the stand during the trial and testified that he had been working for a man by the name of Loren at the time of the holdup. The State's attorney asked him questions concerning the whereabouts of this employer. One of the officers investigated and discovered that Zander hadn't worked there within six years of the date of the offense.

Zander had been the only witness in his own behalf. He testified that he had attended a party given for one of his co-defendants. He and his two associates left the scene for half an hour and later returned. The inference was that the holdup took place in that interval. The jury naturally expected the two co-defendants to support this account. When they didn't testify, his doom was sealed.

Brawl or Holdup?

Nine boys of Polish extraction were charged with murder. The victim of the assault was walking home with two friends when they passed this group of boys whose ages ranged from sixteen to twenty-three. The State contended that the defendants made the attack in the course of a robbery, that the victim was knocked down and suffered a skull fracture which occasioned death. The defense, on the other hand, maintained that the affair was a street brawl in which the victim fell and accidentally suffered a fatal injury.

The State's theory of robbery was confirmed by the victim's watch being found upon one of the defendants and the written statements obtained from all the boys immediately after their arrest. Before the coroner, the defendants denied the truth of their statements claiming that they had been beaten by the police officers. Twenty-five policemen took the stand and denied the attack.

Although the prosecutors had qualified the jurors for the death penalty, in final argument, they did not ask them to impose it. This exhibition of fair play was designed to bring about a compromised verdict entailing imprisonment for murder, or at least manslaughter, calling for a penalty of one year to life.

In his final address, an attorney for the defense attacked, firstly, the competency of the statements as a matter of law, and secondly, their credibility, even though they constituted valid evidence.

Nine defendants were being charged with murder, although the slaying was committed by a single offender. It was contended that each of the boys conspired, aided, or encouraged the consum-

mation of the robbery. When the State had established a conspiracy to rob, or facts indicating participation in the alleged robbery, each became responsible for the consequent fatality. Upon the failure to establish such conspiracy or participation, the State could establish guilt of murder only against the defendant who had struck the fatal blow.

The jury found all the defendants guilty of murder and fixed the penalties at terms of imprisonment from fourteen to thirty years.

Temporary Insanity as a Defense

The defendant was of German extraction, about thirty-five years of age, living apart from his wife. She had sworn out a peace-bond warrant to keep him from molesting her. After appearing at the Police Court in response to this warrant, he went to a hardware store where he purchased a butcher knife. He proceeded to his wife's home. Gaining entrance, he made a furious attack upon his wife and child. He then turned the weapon upon himself. All three were rushed to a hospital by neighbors. The little girl, about ten years of age, died. That the accused was insane during this frenzied attack, was the defense theory. He was without funds, however, to engage the services of alienists. The testimony of friends and relatives was that he had loved his daughter dearly.

A singular feature of the trial was the appearance of a sister of the wife of the accused in the role of a defense witness. She testified as to the waywardness of her sister, how she had entertained other men.

The prosecution was relying upon a strict interpretation of the law. A human life had been taken. The defendant killed someone. The testimony showed that he remembered everything that had happened up to the moment of the tragedy and after it. The unwritten law and temporary insanity failing to impress themselves upon the jurors, they found the defendant guilty of murder and fixed his penalty at fourteen years. The presiding judge felt that an injustice had been done and granted the defense motion for a new trial. The defendant pleaded guilty to manslaughter, carrying a penalty of one year to life.

In explaining his reaction to the evidence the judge stated in substance, "There was clearly no deliberate intent to kill the daughter. That idea arose in the heat of passion. The defendant's attempt to commit suicide showed he was in a frenzy. A homicide committed under these circumstances is voluntary manslaughter and not murder."